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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ANOUSONE SAVANH,

14 Defendant.

Case No. 2:14-CR-00290-KJD-PAL

**ORDER**

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16 Presently before the Court is Plaintiff's Motion to Exclude or Limit the Testimony of  
17 Defendant's Expert Witnesses (#122/124). Defendant filed a response in opposition (#128) and a  
18 response (#132) to the Court's order requesting an expert report.

19 **I. Standard**

20 Federal Rule of Evidence 702 controls the admissibility of testimony by expert witnesses, and  
21 provides:

22 A witness who is qualified as an expert by knowledge, skill, experience, training, or  
23 education may testify in the form of an opinion or otherwise if:

24 (a) the expert's scientific, technical, or other specialized knowledge will help the trier  
25 of fact to understand the evidence or to determine a fact in issue;  
26 (b) the testimony is based on sufficient facts or data;  
27 (c) the testimony is the product of reliable principles and methods; and

9       The Supreme Court in Daubert enumerated a list of factors useful for evaluating the reliability  
10 of a scientific expert, and trial courts have broad discretion to determine whether these factors are  
11 “reasonable measures of reliability” for evaluating non-scientific testimony. Kuhmo Tire, 526 at 153.  
12 In exercising this broad discretion, “not only must the trial court be given broad discretion to decide  
13 whether to admit expert testimony, it must have the same kind of latitude in deciding how to test an  
14 expert's reliability.” United States v. Hankey, 203 F.3d 1160, 1168 (9th Cir. 2000). When an expert's  
15 testimony is not scientific or technical, the reliability of that testimony need not be based on “a  
16 particular methodology or technical framework,” but instead can be found reliable based on the  
17 expert's knowledge and experience alone. Hangarter v. Provident Life and Acc. Ins. Co., 373 F.3d  
18 998, 1018 (9th Cir.2004).

19 In addition to evaluating an expert's reliability, a trial court must also determine whether an  
20 expert has "appropriate qualifications—i.e., some special knowledge, skill, experience, training or  
21 education." Hankey, 203 F.3d at 1168. "Rule 702 contemplates a broad conception of expert  
22 qualifications." Hangarter, 373 F.3d at 1015.

23 II. Donald Cinco

24 The Court is convinced that based on Donald Cinco's *curriculum vitae* and expert report that  
25 Defendant has met his burden in establishing that Cinco is qualified under Rule 702 to offer the  
26 opinions disclosed in Defendant's Notice of Expert Testimony (#59). Deficiencies alleged by the

1 Government in their motion to exclude go to the weight of the evidence as considered by the finder  
2 of fact, the jury. The normal rules of evidence apply, requiring an appropriate foundation to be laid  
3 for the introduction of evidence and opinions by the expert. Therefore, objections raised by the  
4 Government such as relevance, speculation and hearsay are best considered after seeing the  
5 foundation or lack of foundation created during direct examination of the witness. The motion to  
6 exclude Donald Cinco is denied.

7 III. Larry Smith

8 Smith's testimony is limited to his own examination of the computer at issue, particularly to  
9 what pornography he did or did not find on it. Like all other witnesses, he will not be permitted to  
10 offer testimony such as: inadmissible hearsay, irrelevant evidence, bolstering the testimony of other  
11 witnesses, or opinions for which no foundation has been made. The motion to exclude Larry Smith is  
12 denied.

13 IV. Tami Loehrs

14 Defendant has failed to meet his burden in proving that the proposed expert witness  
15 testimony is admissible pursuant to Rule 702 and the Daubert standards. See Daubert, 43 F.3d at  
16 1311, 1316. Plaintiff moved to exclude Loehrs' testimony as cumulative and inappropriately  
17 bolstering Cinco's expert report. Unable to determine whether the proposed testimony would assist  
18 the trier of fact in understanding the evidence and determining a fact in issue, the Court ordered  
19 Defendant to provide a report that complied with Daubert's requirements as previously cited. In  
20 response, Defendant asserted that no report had been prepared, or could be prepared. Defendant's  
21 filings in this action describing Loehrs' testimony repeatedly assert that her testimony would confirm  
22 the conclusions of the other defense experts. Additionally, Defendant asserts that the testimony  
23 "would build upon [the conclusions of the other defense experts.]" However, Defendant has failed to  
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1 demonstrate how the evidence would be anything but cumulative.<sup>1</sup> Therefore, since the Court cannot  
2 conclude that the proposed testimony meets the reliability standards required by Daubert, and finds  
3 that the proposed testimony is cumulative in accordance with Rule 403, the motion to exclude Tami  
4 Loehrs is granted.

5 V. Conclusion

6 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Exclude or Limit the  
7 Testimony of Defendant's Expert Witnesses (#122/124) is **GRANTED in part and DENIED in**  
8 **part.**

9 DATED this 20th day of May 2016.

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13 Kent J. Dawson  
14 United States District Judge  
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<sup>1</sup>Further, the case cited by Defendant, Moore v. Ashland Chem. Inc., 126 F.3d 679, 690 (5th Cir. 1997), was vacated when rehearing *en banc* was granted, and the *en banc* opinion no longer contains the propositions cited by Defendant. See Moore v. Ashland Chem. Inc., 151 F.3d 269 (5th Cir. 1998).